Lembaga Wakaf Hindu Negeri Pulau Pinang v G Manogaran a/l Govindarajoo & Anor

HIGH COURT (PULAU PINANG) — ORIGINATING SUMMONS NO 24NCVC-1079–11 OF 2015
COLLIN SEQUERAH JC
24 AUGUST 2016

Civil Procedure — Injunction — Injunction to restrain — Plaintiff applied for injunction to restrain defendants from managing temple — Whether plaintiff entitled to take over management of temple notwithstanding non-compliance of s 4 of the Hindu Endowments Ordinance 1906

Hindu Law and Custom — Temple — Management of — Plaintiff contended management of temple previously managed by defendants transferred to plaintiff — Whether plaintiff entitled to management of temple by exercising its possessory right to land — Whether plaintiff entitled to take — Whether defendants' management of temple ultra vires defendants' societies constitution over management of temple notwithstanding non-compliance of s 4 of the Hindu Endowments Ordinance 1906 — Hindu Endowments Ordinance 1906 s 4

The plaintiff was a statutory body set out under the Hindu Endowments Ordinance 1906 ('the Ordinance') which role was to administer endowments placed under its administration whereas the defendants were the office bearers of society worshippers of the Dewi Sri Muthu Mariamman Temple at Batu Kawan, Seberang Perai Selatan ('the temple'). The problem arose when the plaintiff contended that they have been accorded the right to manage the temple by virtue of the fact that they had been given possession of the land upon which the temple was situated by the Penang Development Corp ('the PDC') via a letter dated 16 June 2015 ('the said letter'). The defendants on the other hand contended that their society was still lawfully responsible for managing the said temple. In the present action, the plaintiff sought for an injunction to prevent the defendants from carrying out a 'Fire Walking Ceremony' and further to restrain the defendants from organising any activities, collecting any funds or donations from any parties and from administering and managing the affairs of the temple. The issues for court's consideration were: (a) whether by virtue of the land being given to the plaintiff by PDC, the plaintiff was entitled to take over the management of the temple by exercising their possessory right to the land; (b) whether the plaintiff was entitled to take over management of the temple notwithstanding that the provisions of s 4 of the Ordinance had not been complied with; and (c) whether

the defendants' management of the temple was ultra vires the societies constitution ('constitution'). A

Held, dismissing the plaintiff's application:

(1) Prior to the present action action, there had been no attempt to prevent, restrict or to evict the devotees and/or the defendants or the society to access the land on which the temple was situated for their respective purposes. The status of the devotees of the temple and of the society and its members including the defendants were therefore that of licensees on the said land (see para 16). B C

(2) It was clear from the said letter from PDC that the plaintiff was also a licensee. The plaintiff as licensees not being the registered owner of the land could not exercise the right to terminate the license of the society and/or the defendants in accessing the land for purposes related to the management and administration of the said temple. Thus, their claim to manage the affairs of the temple must also necessarily fail as such claim emanated from their possessory right. Further, there could not be a termination of a license by implication or proxy by the mere fact of the said letter. In this regard, the plaintiff therefore did not have the locus standi to commence and maintain the present action against the defendants and/or the said society (see paras 19 & 21–22). D E

(3) For the plaintiff to acquire the right to manage any endowment, including the subject matter temple, there must first be compliance with s 4 of the Ordinance ie that the Governor in Council must have made such order that an endowment shall be administered by the board (the plaintiff). The plaintiff could not therefore acquire the right to manage any endowment otherwise than in accordance with the provisions of s 4 of the Ordinance (see para 32). F

(4) The matters contained in cl 8(3) of the constitution of the society must as of necessity related to the secretary's administrative duties not only with respect to the society but also of that of the affairs of the temple as well. The society does not exist in a vacuum. Although it was a society formed for the worshippers of the temple, the affairs of the society could not be divorced from that of the temple. A liberal reading of the said clause was necessary in order to make sense of and give effect to the duties of the secretary of the society vis a vis the affairs of the temple. The constitution permited them to administer and manage the affairs of the temple and thus it was not ultra vires their constitution (see paras 39–40). G H I

[Bahasa Malaysia summary

Plaintif merupakan badan berkanun yang dinyatakan di bawah Ordinan Wakaf Hindu 1906 ('Ordinan') yang berperanan untuk mentadbir wakaf yang diletakkan di bawah pentadbirannya manakala defendan-defendan

merupakan pemegang jawatan persatuan penyembah Dewi Sri Muthu Mariamman Temple di Batu Kawan, Seberang Perai Selatan ('kuil'). Masalah timbul apabila plaintif berhujah bahawa mereka telah diberikan hak untuk menguruskan kuil itu menurut fakta yang mereka telah diberikan milikan ke atas tanah di mana kuil itu terletak oleh Perbadanan Pembangunan Pulau Pinang ('PPPP') melalui surat bertarikh 16 Jun 2015 ('surat tersebut'). Defendan-defendan sebaliknya berhujah bahawa persatuan mereka masih sah bertanggungjawab untuk mengurus kuil tersebut. Dalam tindakan ini, plaintif memohon untuk satu injunksi bagi menghalang defendan-defendan menjalankan 'Fire Walking Ceremony' dan selanjutnya menyekat defendan-defendan daripada menganjurkan apa-apa aktiviti, mengutip apa-apa dana atau derma daripada mana-mana pihak dan daripada mentadbir dan menguruskan urusan kuil tersebut. Isu-isu untuk pertimbangan mahkamah adalah: (a) sama ada selaras dengan tanah yang diberikan kepada plaintif oleh PPPP, plaintif berhak mengambil alih pengurusan kuil itu dengan menggunakan hak tempat milik mereka ke atas tanah itu; (b) sama ada plaintif berhak mengambil alih pengurusan kuil itu meskipun peruntukan-peruntukan s 4 Ordinan tidak dipatuhi; dan (c) sama ada pengurusan defendan-defendan ke atas kuil itu adalah ultra vires perlembagaan persatuan ('perlembagaan').

Diputuskan, menolak permohonan plaintif:

(1) Sebelum tindakan ini, tiada cubaan untuk menghalang, menyekat atau mengusir penganut-penganut dan/atau defendan-defendan atau persatuan untuk mendapat akses kepada tanah itu di man kuil itu terletak bagi tujuan masing-masing. Status penganut-penganut kuil itu dan persatuan dan ahli-ahlinya termasuk defendan-defendan dengan itu merupakan pemegang lesen tanah tersebut (lihat perenggan 16).

(2) Adalah jelas daripada surat daripada PPPP bahawa plaintif juga merupakan seorang pemegang lesen. Plaintif sebagai pemegang lesen yang bukan pemilik berdaftar tanah itu tidak boleh menggunakan hak untuk menamatkan kesen persatuan dan/atau defendan-defendan dalam mengakses tanah itu bagi tujuan berkaitan dengan pengurusan dan pentadbiran kuil tersebut. Oleh itu, tuntutan mereka untuk mengurus urusan kuil itu juga patut gagal kerana tuntutan sebegini berpunca daripada hak tempat milik mereka. Selanjutnya, tidak mungkin ada penamatan lesen secara implikasi atau proksi oleh fakta surat itu semata-mata. Dalam hal ini, plaintif oleh itu tidak mempunyai locus standi untuk memulakan dan mengekalkan tindakan ini terhadap defendan dan/atau persatuan tersebut (lihat perenggan 19 & 21–22).

(3) Bagi plaintif memperoleh hak untuk mengurus mana-mana wakaf, termasuk hak perkara kuil itu, pertama perlu ada pematuhan s 4 Ordinan iaitu bahawa Gabenor dalam Majlis mungkin telah membuat perintah

sedemikian bahawa suatu wakaf hendaklah ditadbir oleh Lembaga (plaintif). Plaintif tidak boleh dengan itu memperoleh hak untuk mengurus mana-mana wakaf jika tidak mengikut peruntukan s 4 Ordinan (lihat perenggan 32).

(4) Perkara-perkara yang terkandung dalam klausa 8(3) perlembagaan persatuan itu perlu demi keperluan berkaitan tugas pentadbiran setiausaha bukan sahaja berkenaan persatuan itu tetapi juga yang berkenaan urusan-urusan kuil tersebut. Persatuan itu tidak wujud dalam kekosongan. Jikapun ia adalah persatuan yang dibentuk untuk penganut-penganut kuil itu, urusan persatuan tidak boleh dipisahkan daripada urusan kuil itu. Pembacaan liberal klausa tersebut adalah perlu untuk memahami dan melaksanakan tugas-tugas setiausaha masyarakat *vis a vis* hal ehwal kuil. Perlembagaan membenarkan mereka untuk mentadbir dan menguruskan hal ehwal kuil itu dan oleh itu ia tidak *ultra vires* perlembagaan mereka (lihat perenggan 39–40).]

Notes

For cases on injunction to restrain, see 2(2) *Mallal's Digest* (5th Ed, 2015) paras 3927–4017.

For cases on temple in general, see 7(3) *Mallal's Digest* (5th Ed, 2015) paras 4924–4925.

Cases referred to

All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 6 MLJ 97; [2006] 4 CLJ 195, FC (refd)

Dinesh Kanavaji a/l Kanawagi & Anor v Virgin Properties Sdn Bhd & Anor [2016] 2 MLJ 525, CA (refd)

Kalimuthu v S Kandiah [1976] 2 MLJ 217, FC (refd)

Yeap Cheng Hock v Kajima-Taisei Joint Venture [1973] 1 MLJ 230 (refd)

Legislation referred to

Hindu Endowments Ordinance 1906 ss 4(a), (b), (c), 5

Amareson a/l K Velu (Kirubakaran a/l Karthigasu with him) (Amareson & Meera) for the plaintiff.

Ahilan a/l Natarajah (Ahilan & Assoc) for the defendants.

Colin Sequerah JC:

INTRODUCTION

[1] This action brought by way of originating summons by the plaintiff vide encl 1 sought for, inter alia, the following reliefs;

(a) leave to make the application in encl 1;

(b) that the defendant's and/or their agents and/or the representatives and all Committee Members of the Pertubuhan Penganut Dewi Sri Muthu Mariamman, Batu Kawan, Seberang Perai Selatan, Pulau Pinang (PPM-003–07–28032003) ('the society') that was de-registered on 7 September 2015 be restrained by an injunction from organising and/or having a 'Fire/Walking Ceremony' at Arulmigu Kuil Sri Maha Muthu Mariamman, Ladang Batu Kawan, Simpang Ampat, Seberang Perai Selatan ('temple') on 28 November 2015;

(c) that the defendant's or their agents and/or representatives and the Committee Members of the Pertubuhan Penganut Dewi Sri Muthu Mariamman, Batu Kawan, Seberang Perai Selatan, Pulau Pinang (PPM-003-07-28032003) ('the society') that was de-registered on 7 September 2015, be restrained by an injunction from managing, organising any activities, collecting monies or donations from any parties and administering the temple; and

(d) the defendant's account for all monetary collection and donation to the plaintiff within 14 days from the order made.

[2] The matter was first heard on an ex parte basis and I granted upon the plaintiff's application, an ad interim injunction on 27 November 2015 principally in terms of prayers (b) and (c) of encl 1 upon the sole ground advanced by the plaintiff that the said society represented by the defendant's was de-registered on 7 September 2015.

[3] After an inter partes hearing, I lifted the injunction upon proof being shown that the said society had not in fact been de-registered along with the following orders:

(a) the plaintiff to handover the management of the temple to the defendant's or the society on 21 December 2015;

(b) the plaintiff and the defendant's by themselves or their agents and/or representatives be restrained from making any reports to the media (including electronic media) until the final disposal of encl 1 ie the originating summons;

(c) the defendant's are not to obstruct or interfere with devotees from accessing the temple; and

(d) parties be at liberty to apply.

[4] I subsequently heard parties respective submissions in respect of the prayers in the plaintiff's originating summons (encl 1).

MATERIAL FACTS AND PARTIES CONTENTIONS

[5] These are the material facts and contentions of the respective parties in respect of the originating summons (encl 1). The plaintiff is a statutory body as set out in the Hindu Endowments Ordinance 1906. Its main role is to administer the endowments placed under its administration. The defendant's are the office bearers of a society of worshippers of the Dewi Sri Muthu Mariamman Temple at Batu Kawan, Seberang Perai Selatan ('temple'). The defendant's have been managing and administering the affairs of the temple for the past few years.

[6] The crux of the dispute is while the plaintiff contends that they have been accorded the right to manage the temple by virtue of the fact that they have been recently given possession of the land upon which the temple is situated by the Penang Development Corp ('PDC'), the defendant's in reply submitted that their society is still lawfully responsible for managing the said temple.

[7] The dispute between the parties originated when the plaintiff's sought for an injunction to prevent the defendant's from carrying out a 'Fire Walking Ceremony' scheduled for the 28 November 2015 and further to restrain the defendant's from organising any activities, collecting any funds or donations from any parties and from administering and managing the affairs of the temple.

[8] The basis of the plaintiff's application was twofold, firstly, that the said society represented by the defendant's was de-registered (which was subsequently proven not to be the case), and secondly, that the PDC had by way of a letter dated 16 June 2015, informed them that the land on which the temple is situated and all temple sites and Hindu graveyards thereat have now been placed under the plaintiff. Therefore based upon the said letter dated 16 June 2015, the plaintiff has taken over the management of the said temple and have appointed a management committee for the temple.

[9] The defendant's by way of reply stated that the temple has been in existence for more than two centuries. They state that the previous owner of the land on which the temple is situated was the Taiko Estate which had granted permission and authorisation for their estate workers at the time to erect the temple on humanitarian grounds.

[10] They therefore submit that the predecessor in title to the land has knowledge of the existence of the temple and that the temple was erected using part of the monthly wages of the estate workers. The present committee members of the temple comprise the third generation of estate workers.

[11] The defendant's further state that the plaintiff is only allowed to manage specific temples designated in the schedule of the Hindu Endowment Board but not the temple which is the subject matter of the present action as it has not been shown that there is mismanagement of the temple. They contend that by virtue of the Hindu Endowments Ordinance of 1906 ('the Ordinance'), the plaintiff have not obtained an order from the Governor in Council as defined under ss 4 and 5 of the Ordinance to manage the said temple.

[12] The defendant's thus also contend that the plaintiff has no locus standi to commence this action.

[13] The plaintiff by way of reply submitted that they are not seeking to take over the management of the temple by virtue of s 4 of the Ordinance by rather by virtue of their possessory right to the land given to them by the PDC. They also submit that the constitution of the society does not have as its object the management of the temple and hence, it is ultra vires the constitution.

ANALYSIS AND FINDINGS

[14] From submissions advanced by parties, the issues that arise for consideration is firstly, whether by virtue of the land being given to them by PDC, the plaintiff is entitled to take over the management of the temple by exercising their possessory right to the land. Secondly, whether the plaintiff is entitled to take over the management of the temple notwithstanding that the provisions of ss 4 and 5 of the Ordinance have not been complied with. Finally, whether the defendant's management of the temple is ultra vires their constitution. These will now be addressed in turn.

Whether by virtue of the land being given to them by PDC, the plaintiff is entitled to take over the management of the temple by exercising their possessory right to the land?

[15] It is not in dispute that from all accounts, the said temple has been in existence for a long time although it cannot be ascertained for how long. It is also not in dispute that the society represented by the defendant's have been managing the affairs of the temple for some years now. It is also evident that the predecessor in title to the land, namely Taiko Estate had permitted the temple to be erected and for the estate workers to worship there without let or hindrance.

[16] Prior to this action, there has been no attempt to prevent, restrict or to evict the devotees and/or the defendant's or the society to access the land on which the temple is situated for their respective purposes. The status of the

devotees of the temple and of the society and its members including the defendant's are therefore that of licensees on the said land.

[17] In *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] 1 MLJ 230, a licensee was defined as follows:

> At common law a licensee is one who is lawfully on the premises, in the sense that he is not a trespasser, but does not come within the description of an invitee because he does not enter on business which concerns the occupier. He is there with the permission of the occupier given as a matter of grace or pleasure and not as a matter of business.

[18] It is not in dispute that the letter from the PDC dated 16 June 2015 is the source through which the plaintiff now claims the right to manage the temple. Although no proof was tendered, a perusal of the said letter would indicate that the PDC is the registered land owner.

[19] By its own admission, the plaintiff claims that its rights arise out of a possessory right to the land by virtue of the contents of the said letter i.e. that PDC has given the land to them. However, it is equally clear from the said letter that the status of the plaintiff's are that they are also mere licensees of the land, such licence having emanated from the said letter by PDC.

[20] A licence does not confer upon the licensee any interest or property in the land. See *Kalimuthu v S Kandiah* [1976] 2 MLJ 217 at p 221. What the plaintiff's who themselves are mere licensees are now seeking to do is to exercise the right to terminate the licence of another licensee to the land and by extension, the right to manage the temple.

[21] As licensees, the plaintiff enjoy a no better position than the society and/or the defendant's. Therefore they themselves, not being the registered owner of the land, cannot exercise the right to terminate the licence of the society and/or the defendant's in accessing the land for purposes related to the management and administration of the said temple. This being the case, their claim to manage the affairs of the temple must also necessarily fail as such right they claim, emanates from their possessory right. I further find that there cannot be a termination of a license by implication or proxy by the mere fact of the letter from the PDC dated 16 June 2015 given to the plaintiff.

[22] In this regard, the plaintiff therefore does not have the locus standi to commence and maintain this action against the defendant's and/or the said society. This ground of itself is sufficient to conclude this matter against the plaintiff. Notwithstanding, I proceeded to consider the other issues arising in determining this application.

Is the plaintiff entitled to take over the management of the temple notwithstanding that the provisions of s 4 of the Ordinance have not been complied with?

[23] Section 4 of the said Ordinance reads as follows:

> 4 Whenever it appears to the Governor in Council on the report or any such Board that in such State —
>
> (a) Any endowment has been mismanaged;
>
> (b) There are no trustees appointed for the management of any endowment; or
>
> (c) It would be otherwise to the advantage of any endowment that the same should be administered by the Board;
>
> The Governor may order that such endowment shall be administered by the Board.

Endowment is defined as follows:

> Endowment means any endowment be it land, landed property, buildings, houses, burial grounds, temples, money given or to be given for the benefit of the Hindu community in Penang.

[24] The above would clearly indicate that the Governor in Council may order certain endowments falling under the circumstances envisaged in s 4(a), (b) or (c) above to be administered by the board (plaintiff). The question is whether the plaintiff is exempt from the said order of the Governor in Council where as in a situation such as the present, they are claiming the management of the temple by virtue of their possessory right to the land upon which the temple is situated.

[25] To put it another way, can the plaintiff acquire the right to manage temples other than in circumstances laid out in s 4(a), (b) or (c) and without an order of the Governor in Council?

[26] A reading of the Ordinance clearly indicates that the plaintiff's main role is to administer the endowments placed under its administration. From a perusal of the Ordinance itself, it would appear that the circumstances under which the plaintiff may administer endowments are specifically provided for in the said s 4. Once an order of the Governor in Council is made pursuant to s 4, the consequence is that all the property previously administered by the trustees of the endowment shall be then vested in the board pursuant to s 5.

[27] There are no other circumstances or applicable procedure through which the plaintiff can acquire the right to administer or manage such

endowments other than as provided for under s 4 of the Ordinance. The language employed in the said s 4 is plain and unambiguous.

[28] When this is the case, established authority requires effect to be given to it as there cannot arise the question of another meaning. In the decision of the apex court in *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97; [2006] 4 CLJ 195, it was held regarding the principles of statutory interpretation:

> *The choice prescribed in s 17A of a construction that would promote the purpose the purpose or object underlying the Act shall be preferred to a construction that would not promote that purpose or object can only arise when the meaning of a statutory provision is not plain and is ambiguous. If therefore, the language of a provision is plain and unambiguous s 17A will have no application as the question of another meaning will not arise.* Thus, it is only when a provision is capable of bearing two or more different meanings can s 17A be resorted to in order to determine the one that will promote the purpose or object of the provision. *Such an exercise must be undertaken without doing any violence to the plain meaning of the provision. This is a legislative recognition of the purposive approach and is in line with the current trend in statutory* interpretation. (Emphasis added.)

[29] This principle was followed recently in *Dinesh Kanavaji a/l Kanawagi & Anor v Virgin Properties Sdn Bhd & Anor* [2016] 2 MLJ 525.

[30] As a plain and unambiguous meaning therefore emerges from a reading of the said s 4, the argument that the plaintiff is entitled to any possessory right to the land and all fixtures on it and by implication, the right to manage the affairs of the said temple, cannot be the correct position under the circumstances.

[31] In any event, as I have found earlier, the plaintiff, themselves being licensees, have no better right to the land than the defendant's and/or the society and as such does not possess the necessary locus standi to commence this action.

[32] I find therefore that for the plaintiff to acquire the right to manage any endowment, including the subject matter temple, there must firstbe compliance with s 4 of the Ordinance ie that the Governor in Council must have made such order that an endowment shall be administered by the board (plaintiff). The plaintiff cannot therefore acquire the right to manage any endowment otherwise than in accordance with the provisions of s 4.

[33] Further, although asserted as such, there was no evidence or material before this court to suggest that the said temple has been mismanaged by the defendant's or the society that would entitle the plaintiff's to take over its

management by virtue of s 4 of the said Ordinance. In any event, there is no prayer seeking for a declaration that the defendant's and/or the society is not entitled to manage the temple.

Whether the defendant's management of the temple is ultra vires their constitution?

[34] Clause 2 of the societies' constitution states its objectives and aims as follows:

FASAL 2 TUJUAN/MATLAMAT

(1) Menganjurkan perayaan keagamaan tahunan dan hari hari kebesaran setelah mendapat kebenaran dari pihak yang berkenaan;

(2) Memupuk semangat tolong menolong demi kebajikan para ahli;

(3) Mendalami ajaran agama dan mengeratkan perpaduan sesama ahli.

[35] The plaintiff submitted that none of the objectives enumerated above empower the defendant's to administer or manage the temple. The defendant's by way of response alluded to cl 8(3) which reads:

FASAL 8 KEWAJIPAN KEWAJIPAN PEGAWAI

(3) Setiausaha hendaklah menjalankan kerja pentadbiran pertubuhan mengikut undang undang dan hendaklah ia menjalankan perintah mesyuarat agung dan jawatan kuasa. Ia bertanggungjawab mengendalikan urusan surat menyurat dan menyimpan semua buku, surat kecuali akaun dan buku buku kewangan.

[36] The plaintiff's however replied that the powers enumerated in the clause is with respect to administering of the society and not the temple itself.

[37] The name of the society is the 'Pertubuhan Penganut Dewi Sri Muthu Mariamman'. One of its objectives in cl 2 is to organise annual religious festivals and of certain commemorative days subject to approval of the relevant authorities. These activities are activities carried out at the temple and are in relation to festivals and activities with respect to and in connection with the said temple. These activities are therefore inextricably bound up with the affairs of the temple.

[38] It is too narrow a definition to say therefore that just because there is absent an express clause entitling them to manage the affairs of the temple, that the defendant's or the society they represent are therefore precluded by their own constitution from so managing the affairs of the temple. The objectives spelt out in cl 2 should therefore be read as a whole and not in isolation or be

construed narrowly in order to defeat the true intent of the society which is, and for a number of years has been, the management of the affairs of the temple and all related activities thereat.

[39] Similarly, the matters contained in cl 8(3) must as of necessity relate to the secretary's administrative duties not only with respect to the society but also of that of the affairs of the temple as well. the society does not exist in a vacuum. Although it is a society formed for the worshippers of the temple, the affairs of the society cannot be divorced from that of the temple and as alluded to earlier are inextricably bound up with the management of the temple affairs. A liberal reading of the said clause is necessary in order to make sense of and give effect to the duties of the secretary of the society vis a vis the affairs of the temple.

[40] I find therefore that the constitution of the defendant society permits them to administer and manage the affairs of the temple and thus it is not ultra vires their constitution.

[41] For the reasons stated above, I therefore dismiss the plaintiff's application in encl 1 with costs. I further make consequential orders as follows:

(a) the devotees of the temple be allowed unhindered access to the temple site for the purpose of worship and all matters incidental to worship; and

(b) the society and its members be allowed unhindered access to the said temple site for the purposes of managing and administering the temple.

Plaintiff's application dismissed.

Reported by Dzulqarnain Ab Fatar